

ORDINANCE NO. 28472

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
SECTIONS 13.28.010, 13.28.240, 13.28.250 AND
13.28.260 OF CHAPTER 13.28 OF TITLE 13 OF THE SAN
JOSE MUNICIPAL CODE AND ADDING A NEW SECTION
13.28.245 TO ENABLE THE CITY TO INVOICE A
PROPERTY OWNER FOR EMERGENCY TREE
SERVICES PERFORMED ON BEHALF OF THE ADJACENT
PROPERTY OWNER**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 13.28.010 of Chapter 13.28 of Title 13 of the San José Municipal Code is amended to read as follows:

13.28.010 Definitions

Except where the context requires otherwise, the definitions given in the following subsections shall govern the construction of this Chapter:

- A. A "corner lot" means any lot which is bounded on two or more sides by public or private streets.
- B. The term "dangerous" shall refer to trees, shrubs or hedges that appear to be : dead; liable to fall; or to have the potential to obstruct public pedestrian or vehicular travel and would require corrective action, including, but not limited to: removal of trees or limbs that may soon block the public right-of-way and clearance pruning of limbs that impair the view of traffic or signs.

- C. The term "hedge" shall mean any group of shrubs planted in line or in groups so that the branches of any one plant are intermingled or form contact with the branches of any other plant in the line.
- D. An "interior lot" means any lot which is not a corner lot.
- E. The term "manifest public danger" shall refer to any trees, shrubs or hedges that (1) obstructs in any way the public right-of way that poses an imminent hazard to public health or safety; (2) is in a decayed or damaged condition that is an imminent hazard to public health or safety; or (3) that obstructs traffic signals and certain regulatory traffic signs.
- F. "Persons," as used herein, shall mean any person, firm, association, organization, partnership, business, trust, company or corporation.
- G. The term "park strip" shall mean that area of the street lying between the face of curb and the sidewalk.
- H. The term "planting easement" shall mean an easement in the name of the city for planting trees, shrubs or hedges contiguous to the public right-of-way for vehicular traffic.
- I. The term "public place" shall mean any real property owned by, leased to or under the control of the city of San Jose.
- J. The term "shrub" shall mean a bush, not a hedge, or a plant more than twelve inches but not more than six feet tall.

- K. A "street" shall mean a public right-of-way owned by the city of San Jose whose primary function is to carry vehicular traffic and shall also include sidewalks, park strips and tree planting easements.
- L. The term "street tree" means any tree on a street.
- M. The term "tree" shall mean any growing plant exceeding six feet in height, whether planted singly or as a hedge.

SECTION 2. Section 13.28.240 of Chapter 13.28 of Title 13 of the San José Municipal Code is amended to read as follows:

13.28.240 Removal of Dangerous Trees By City

If the tree, shrub or hedge is not cut down, trimmed, or removed as required by notice, the Director shall perform this work or cause this work to be performed and the affected property may be assessed for the costs incurred in accordance with this Part.

SECTION 3. Chapter 13.28 of Title 13 of the San José Municipal Code is amended to add a new section, to be numbered, entitled and to read as follows:

13.28.245 Emergency Tree Services Performed By City

- A. In cases of manifest public danger, the Director of Transportation shall perform or cause to be performed the work described in Sections 13.28.180 and 13.28.200 without observance of any notice requirements after which the affected property may be assessed for the costs incurred in accordance with this Part.

- B. The owner of a property abutting a street tree, shrub or hedge or a property containing a tree, hedge, or shrub that poses a manifest public danger and is required to take corrective action by the City shall pay any costs and expenses associated with the emergency services, including costs of removal of the tree, hedge or shrub, administration time and expense, late charges, and the handling of any lien placed on the property due to failure of the property owner to pay within the required period.
- C. After completion of the emergency tree service if the owner has failed to pay the costs of the work as set forth in this Part, the Director shall issue a notice of cost informing the property owner of the failure to pay for the cost of the work completed and that failure to pay the amount will result in a hearing by council, described in Section 13.28.250. If the property owner fails to pay following the notice of cost and hearing by council, the Director shall initiate the assessment procedures set forth in this Part.

SECTION 4. Section 13.28.250 of Chapter 13.28 of Title 13 of the San José Municipal Code is amended to be entitled and to read as follows:

13.28.250 Notice of Hearing By Council

After completion of the work and failure of an owner to pay the amounts set forth in the notice of cost, the Director of Transportation shall cause notice of the public hearing thereof to be given in the manner specified in this Chapter, which shall specify the day, hour and place when the city council will hear and pass upon a report by the Director of Transportation of the cost of the work, together with any written objections or protests, if any, which may be raised by any person liable to be assessed for the cost of such work.

SECTION 5. Section 13.28.260 of Chapter 13.28 of Title 13 of the San José Municipal Code is amended to be entitled and to read as follows:

13.28.260 Conference with Director of Transportation

The Director of Transportation may include with the notice of hearing, as specified in Section 13.28.250 hereinabove, additional notice of a conference with the said Director. The conference which may be scheduled by the said Director upon receipt of the written objection or protest, specified in Section 13.28.250, shall be conducted prior to the Council hearing for the purpose of discussion between the property owner and the said Director of the costs of the work. Upon the conclusion of the conference, the said Director shall note his or her conclusions in the report together with any recommendations for adjustment of the costs of the work.

PASSED FOR PUBLICATION of title this 16th day of December, 2008, by the following vote:

AYES:	CAMPOS, CHIRCO, CHU, CONSTANT, CORTESE, LICCARDO, NGUYEN, OLIVERIO, PYLE, WILLIAMS, REED.
NOES:	NONE.
ABSENT:	NONE.
DISQUALIFIED:	NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

